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HAWAII LABOR
RELATIONS BOARD

Attorneys for Director of Labor
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of DIRECTOR,) CASE NO. OSH 2009-13
DEPARTMENT OF LABOR AND) (Inspection No. 311435143)
INDUSTRIAL RELATIONS,)
) STIPULATION AND SETTLEMENT
Complainant,) AGREEMENT; EXHIBIT A; APPROVAL
) AND ORDER
vs.)
)
PEREIRA OF HAWAII, INC., dba MIDAS)
AUTO SERVICE,)
)
Respondent.)

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and
Respondent PEREIRA OF HAWAII, INC., dba MIDAS AUTO SERVICE ("Respondent")
having reached a full and complete settlement of the above-captioned contested case presently
pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about October 6, 2008, the Director, by and through the State of Hawaii's
Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located
at 94-709 Farrington Highway, Waipahu, Hawaii 96797.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on April 9, 2009 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$5,500.00. *See Exhibit A.*

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 94-709 Farrington Highway, Waipahu, Hawaii 96797.

3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than ten (10) days after this Stipulation and Settlement Agreement ("Agreement") is filed; Respondent's failure to timely do so may result in additional penalties or follow up inspections.

5. With regard to Citation 1, Item 1, involving a broken release cable for a rotary hydraulic lift, Respondent agrees and confirms it has replaced the broken release cable and will prevent further violations by having its operations and shop managers inspect such lift safety mechanisms at least once every two weeks.

6. With regard to Citation 1, Items 2a and 2b, involving a bench grinder with a missing adjustable work rest and missing adjustable tongue, Respondent agrees and confirms it has discarded the bench grinder and will no longer keep or use bench grinders in any of its shops.

7. With regard to Citation 1, Item 3, involving a 3-wire extension cord with a missing ground pin, Respondent agrees and confirms it has discarded the extension cord and will continue to discard, and not keep for repair, any extension cord damaged hereafter.

8. With regard to Citation 1, Item 4, involving an arc welding machine with a spliced power cord, Respondent agrees and confirms it has discarded and replaced the arc welding machine with a new Mig welder.

9. With regard to Citation 1, Item 5 involving damaged outer jackets on a 3-wire extension cord and power cord for an arc welding machine, Respondent agrees and confirms it has discarded the extension cord and arc welding machine in accordance with paragraphs 7 and 8 above and will continue to discard, and not keep for repair, any extension cord damaged hereafter.

10. The violations and corresponding characterizations as stated in the Citation are affirmed. *See Exhibit A.*

11. The Director reduces the aggregate penalty from \$5,500.00 to \$4,400.00, which Respondent shall pay in full to the Director of Budget and Finance under the following payment schedule: (a) \$1,400.00 within ten days after this Agreement is filed; (2) a second payment of \$1,500.00 within thirty days after the first payment is due; and (3) and a final payment of \$1,500.00 within thirty days after the second payment is due.

12. If Respondent fails to fulfill any condition of this Agreement as required, Respondent shall automatically and without further notice be liable for the entire original penalty in the amount of \$5,500.00 and shall automatically and without further notice pay the Director of Budget and Finance an additional \$1,100.00. All amounts shall be immediately due and owing. If Respondent fails to pay all penalties and the Director institutes legal action to collect on the outstanding amount due, Respondent agrees to pay all fees and costs, including reasonable

attorney's fees, incurred to collect on the unpaid penalties. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

13. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

14. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

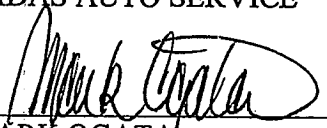
15. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

16. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

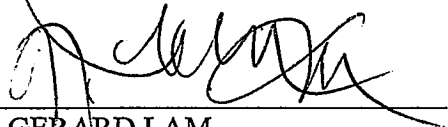
17. The Parties agree that upon the approval of this Agreement by the Board, the Board shall dismiss this case and Respondent's appeal.

DATED: Honolulu, Hawaii, July 23, 2009.

PEREIRA OF HAWAII, INC.,
dba MIDAS AUTO SERVICE

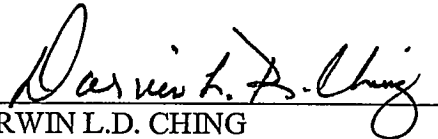

By: MARK OGATA
Its: General Manager

APPROVED AS TO FORM:



J. GERARD LAM
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii
APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



DARWIN L.D. CHING

ORDER NO. 333

DATED: July 23, 2009



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

In re: Director, Dept. Of Labor And Indus. Relations v. Pereira of Hawaii, Inc., dba Midas Auto Service., Case No. OSH 2009-13, (Inspection No. 311435143), Stipulation And Settlement Agreement; Exhibit "A"; Approval And Order.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7005 1820 0003 3812 0781

Citation and Notification of Penalty

To:	Inspection Number: 311435143 (Conroy Dang)
Pereira of Hawaii Inc dba Midas Auto Service	Inspection Date(s): 10/06/2008- 10/06/2008
and its successors	Issuance Date: 04/09/2009
94-709 Farrington Hwy	OSHC ID: R1844
Waipahu, HI 96797	Optional Report No.: 00309
	Inspection Type: Complaint
	Scope of Inspection: Comprehensive Inspection

Inspection Site:

94-709 Farrington Hwy
Waipahu, HI 96797

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

DARWIN L.D. CHING, DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Pereira of Hawaii Inc dba Midas Auto Service
94-709 Farrington Hwy
Waipahu, HI 96797

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 04/09/2009. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311435143
Inspection Dates: 10/06/2008 - 10/06/2008
Issuance Date: 04/09/2009



Citation and Notification of Penalty

Company Name: Pereira of Hawaii Inc dba Midas Auto Service
Inspection Site: 94-709 Farrington Hwy, Waipahu, HI 96797

Citation 1 Item 1 Type of Violation: **Serious**

HAR §12-60-2(a)(3) was violated because:

Rotary Hydraulic Lift, model SPOA9-200, serial number AFM98C1068, was actively being used even though it had a broken release cable for its locking mechanism. A screwdriver was placed into the locking mechanism to keep the lift's lock in an unlock position. Bypassing the locking mechanism allowed employees to be exposed to potential serious injuries.

§12-60-2(a)(3) states "Every employer shall provide safe work places and practices by elimination or reduction of existing or potential hazards. Elimination of existing or potential hazards by design, process substitution, or other appropriate methods is preferred because it eliminates the need for further employee protection. When elimination is not feasible, reduction of existing or potential hazards to acceptable levels, using methods such as engineering or administrative controls, isolation, or guarding, shall be promptly used. When these methods are inadequate to reach acceptable levels, personal protective equipment shall be provided and used."

Location: Automotive shop at 94-709 Farrington Highway

Date By Which Violation Must be Abated:
Penalty:

04/27/2009
\$ 1,100.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311435143
Inspection Dates: 10/06/2008-10/06/2008
Issuance Date: 04/09/2009



Citation and Notification of Penalty

Company Name: Pereira of Hawaii Inc dba Midas Auto Service
Inspection Site: 94-709 Farrington Hwy, Waipahu, HI 96797

The alleged violations below (2a & 2b) have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 2a Type of Violation: **Serious**

29 CFR 1910.215(a)(4) [Refer to chapter 12-80.1, HAR] was violated because:

Skil 8" bench grinder, model 3698, was missing its adjustable work rest. The missing adjustable work rest exposed employees to potential serious injuries.

29 CFR 1910.215(a)(4) states "Work rests. On offhand grinding machines, work rests shall be used to support the work. They shall be of rigid construction and designed to be adjustable to compensate for wheel wear. Work rests shall be kept adjusted closely to the wheel with a maximum opening of one-eighth inch to prevent the work from being jammed between the wheel and the rest, which may cause wheel breakage. The work rest shall be securely clamped after each adjustment. The adjustment shall not be made with the wheel in motion."

Location: Automotive shop at 94-709 Farrington Highway

Date By Which Violation Must be Abated:
Penalty:

04/20/2009
\$ 1,100.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Pereira of Hawaii Inc dba Midas Auto Service
Inspection Site: 94-709 Farrington Hwy, Waipahu, HI 96797

Citation 1 Item 2b Type of Violation: **Serious**

29 CFR 1910.215(b)(9) [Refer to chapter 12-80.1, HAR] was violated because:

Skil 8" bench grinder, model 3698, was missing its adjustable tongue. The missing adjustable tongue exposed employees to potential serious injuries.

29 CFR 1910.215(b)(9) states "Exposure adjustment. Safety guards of the types described in Subparagraphs (3) and (4) of this paragraph, where the operator stands in front of the opening, shall be constructed so that the peripheral protecting member can be adjusted to the constantly decreasing diameter of the wheel. The maximum angular exposure above the horizontal plane of the wheel spindle as specified in paragraphs (b)(3) and (4) of this section shall never be exceeded, and the distance between the wheel periphery and the adjustable tongue or the end of the peripheral member at the top shall never exceed one-fourth inch. (See Figures O-18, O-19, O-20, O-21, O-22, and O-23.)"

Location: Automotive shop at 94-709 Farrington Highway

Date By Which Violation Must be Abated:

04/20/2009

/



Citation and Notification of Penalty

Company Name: Pereira of Hawaii Inc dba Midas Auto Service
Inspection Site: 94-709 Farrington Hwy, Waipahu, HI 96797

Citation 1 Item 3 Type of Violation: **Serious**

29 CFR 1910.304(g)(5) [Refer to chapter 12-89.1, HAR] was violated because:

An orange, 3-wire, extension cord was missing its ground pin. An extension cord with an open ground exposes the employees to potential serious injuries from an electrical hazard.

29 CFR 1910.304(g)(5) states "Grounding path. The path to ground from circuits, equipment, and enclosures shall be permanent, continuous, and effective."

Location: Automotive shop at 94-709 Farrington Highway

Date By Which Violation Must be Abated:	Corrected
Penalty:	\$ 1,100.00

Citation 1 Item 4 Type of Violation: **Serious**

29 CFR 1910.305(g)(2)(ii) [Refer to chapter 12-89.1, HAR] was violated because:

Three conductors of the power cord for the Lincoln arc welding machine, serial number 9794-AC853146, were spliced. The spliced power cord exposes the employees to potential serious injuries from an electrical hazard.

29 CFR 1910.305(g)(2)(ii) states "Flexible cords may be used only in continuous lengths without splice or tap. Hard-service cord and junior hard-service cord No. 14 and larger may be repaired if spliced so that the splice retains the insulation, outer sheath properties, and usage characteristics of the cord being spliced."

Location: Automotive shop at 94-709 Farrington Highway

Date By Which Violation Must be Abated:	04/20/2009
Penalty:	\$ 1,100.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Pereira of Hawaii Inc dba Midas Auto Service
Inspection Site: 94-709 Farrington Hwy, Waipahu, HI 96797

Citation 1 Item 5 Type of Violation: **Serious**

29 CFR 1910.334(a)(2)(i) [Refer to chapter 12-89.1, HAR] was violated because:

An orange, 3-wire, extension cord and a green, 3-wire, power cord for the Lincoln arc welding machine, serial number 9794-AC853146, had areas of damage to its outer jackets. The damage to the extension cord allowed bare copper wires to be exposed for its conductors. The damage to the arc welder power cord resulted in the conductors being spliced back together. The damaged cords expose the employees to potential serious injuries from an electrical hazard.

29 CFR 1910.334(a)(2)(i) states "Visual inspection. Portable cord- and plug-connected equipment and flexible cord sets (extension cords) shall be visually inspected before use on any shift for external defects (such as loose parts, deformed and missing pins, or damage to outer jacket or insulation) and for evidence of possible internal damage (such as pinched or crushed outer jacket). Cord- and plug-connected equipment and flexible cord sets (extension cords) which remain connected once they are put in place and are not exposed to damage need not be visually inspected until they are relocated."

Location: Automotive shop at 94-709 Farrington Highway

Date By Which Violation Must be Abated:
Penalty:

04/20/2009
\$ 1,100.00

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311435143
Inspection Dates: 10/06/2008 - 10/06/2008
Issuance Date: 04/09/2009



Citation and Notification of Penalty

Company Name: Pereira of Hawaii Inc dba Midas Auto Service
Inspection Site: 94-709 Farrington Hwy, Waipahu, HI 96797

Citation 2 Item 1 Type of Violation: Other

29 CFR 1910.132(h)(1) [Refer to chapter 12-64.1, HAR] was violated because:

The employer failed to provide personal protective equipment such as safety glasses, ear plugs, and protective gloves at no cost to the employees.

29 CFR 1910.132(h)(1) states "Except as provided by paragraphs (h)(2) through (h)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees."

Location: Establishment

Date By Which Violation Must be Abated:
Penalty:

04/20/2009
\$ 0.00

DARWIN L.D. CHING
Director

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: Pereira of Hawaii Inc dba Midas Auto Service
Inspection Site: 94-709 Farrington Hwy, Waipahu, HI 96797
Issuance Date: 04/09/2009

Summary of Penalties for Inspection Number 311435143

Citation 1, Serious	= \$ 5,500.00
Citation 2, Other	= \$ 0.00
TOTAL PENALTIES	= \$ 5,500.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.